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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/856,228

05/16/2001

Craig L. Linden

6674

29162

7590

12/28/2009

CRAIG L. LINDEN  
1335 MIDWAY DRIVE  
ALPINE, CA 91901

EXAMINER

MILLER, BENA B

ART UNIT

PAPER NUMBER

3725

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DELIVERY MODE

12/28/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/856,228	<b>Applicant(s)</b> LINDEN, CRAIG L.	
	<b>Examiner</b> Bena Miller	<b>Art Unit</b> 3725	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 11, 19, 21, 22 and 24-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 11, 19, 21, 22 and 24-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The examiner acknowledges the applicant's response to the Notice of Non-Compliant mailed 6/23/09. However, as noted below, there are a few claims which require additional corrections.

#### ***Claim Objections***

Claims 11 and 25 are finally objected to because of the following informalities: Regarding claim 11, the deleted phrase "physical output" should not be included in the claim. Regarding claim 25, the phrase "medical devices, therapy devices, rehabilitation", recited in line 10, should not be underlined since these limitations were included in the amendment filed 10/24/09. See the Amendment filed 10/24/09. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 25 is finally rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claim recites a "method for.....display apparatus according claim 4".

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However, the specification of the claimed invention does not clearly define how the steps recited in subpart a through c are practiced by the apparatus of claim 4.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-38 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with indefiniteness that are too numerous to point out in every instance. The following examples are provided for the applicant's use in making corrections wherever appropriate but not specifically pointed to.

Regarding claim 1, it is not clear whether the phrase "means for receiving at least one input from a user", recited in line 5, is the same as the "means for receiving input" or if the means recited is an additional means.

Regarding claim 3, it is not clear if the means recited in line 2 the same as the "means for producing from the input at least one signal" recited in line 6 of claim 1. Further, the claim recites the input means does not include a means to receive an input from the user. See lines 3 and 4 of the claim. However, claim 1 recites in lines 5 and 6, a means for receiving at least one input from a user. This is confusing. It not clear whether the input means receive an input from a user.

Regarding claim 4, there is lack of antecedent basis for the limitation "the input information", recited in line 7. Further, it is not clear what are all of the forms of energy encompassed by the phrase "other form of energy" recited in line 7.

Regarding claim 25, the claim recites a “method for.....display apparatus according claim 4”. However, the steps recited in subpart a through c does not appear to relate to the apparatus of claim 4. In other words, the steps do not appear to be able to be practiced by the claimed apparatus. Further, the claim recites in line 3 of subpart b, “applying.....functionalities of the apparatus of claim 4”. This is confusing since the claim recites in line 1-3 a “method for.....display apparatus according claim 4”.

Regarding claim 33, it is not clear what is encompassed by the phrase “sister devices”. Does this mean the devices are the same?

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 11 and 25, as best as understood, are finally rejected under 35 U.S.C. 102(e) as being anticipated by 6,744,370 to Sleichter, III et al (hereinafter Sleichter). Sleichter discloses a tactile interactive system without a host pc comprising an energy source (column 2 lines 51-61), means for receiving input (abstract), a transducer (abstract), a means for displaying stimuli (abstract, line 30), means for operatively connecting the

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energy source and input receiving means (controller), an output component (14), means for remotely controlling (36). In that the structures are met by Sleichter, it is presumed to be inherently capable of the claimed functions.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 11, 19, 21, 22 and 24-38, as best as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kikinis in view of 5,984,880 to Lander et al (hereinafter Lander).

Kikinis discloses a powered interactive display comprising an energy source means (power supply 33), a means (column 5, lines 56-67 of the specification) for receiving input, a transducer (column 5, lines 56-67 of the specification), output component (73 and 75), means for displaying stimuli (doll 13), a means for remote controlling (fig 2), means to deliver electrical energy to a being (fig 2), further comprising a means for connecting energy source and the input means ( PC 15), a recording and playback means (column 8, lines 52-57 of the specification), transmitters and receivers (col. 9, par. 2). Kikinis also discloses an additional or hybrid display

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means (column 3, lines 66-67 and column 4 lines 1-4 of the specification). Regarding claim 25, the examiner takes the position the steps as claimed are capable of being practiced with the device of Kikinis, especially in view of the rejection noted above.

Regarding claims 27-31, the examiner takes the position that the device of Kikinis is operable to perform the functional limitations as claimed. Furthermore, regarding claims 36-38, the examiner consider the device of Kikinis to be a handheld device.

Kikinis does not however disclose the apparatus is operable without a pc host computer. Lander teaches having an interactive physical display that has tactile feedback. Lander further teaches having a wireless communication system without the use of a host computer (column 15 lines 1-10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the teachings of Lander with the system of Kikinis for the purpose of making the system wireless.

Regarding claims 32-35, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use another apparatus, including the elements as claimed, with the device of Kikinis, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

### ***Response to Arguments***

Applicant's arguments filed 7/23/09 have been fully considered but they are not persuasive. In response to the applicant's remarks to the Notice of Non-Compliance, the applicant's attention is directed to the examiner's remarks noted above. In response

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to the applicant's remarks to the claims objections, the amendment filed 07/23/09 overcomes the claim objections.

In response to the applicant's remarks that the device of Sleichter is not inherently capable of claimed functions, the examiner disagrees. The examiner contends the device of Sleichter teaches the claimed limitations as noted above. Therefore, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus, in this instance Sleichter, satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the device of Kikinis teaches the elements of the claimed elements as noted above. Lander et al teaches that it is well known to use an apparatus to operate without a scripted control routines executed by the CPU of a PC host computer as noted above. Therefore, the examiner maintains the limitations are met by the combination of Kikinis and Lander et al. Regarding the dependent claims, the applicant's attention is direct to the above rejection.



In response to applicant's request to incorporate Provisional Patent Applications, the data provided for the Provisional Patent Applications should be provided in either the first sentence(s) of the specification or in an application data sheet. The applicant's attention is directed to 37 CFR 1.78(a) and section 201.11 of the Manual of Patent Examining Procedures (MPEP).

In response to the applicant's request for the examiner to specify the date of the last entered specification, the specification filed on 3/27/05 was not entered by the examiner.

For the reasons noted above, this Office Action is made Final.

### ***Conclusion***

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 571.272.4427.

The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bena Miller/  
Primary Examiner, Art Unit 3725  
December 22, 2009

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